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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEAMSTERS BREWERY & SOFT DRINK WORKERS LOCAL UNION 896, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO,
Petitioner,

vs.

ANHEUSER-BUSCH, INC., ROBERT WARNER, a.k.a., BOB WARNER, and Does 1 Through 100, Inclusive,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the lower court properly uphold summary judgment for Respondents, based on the finding that Respondent Anheuser-Busch's right to conduct work place searches was governed by the collective bargaining agreement between Anheuser-Busch and Petitioner Teamsters Union, and therefore state law claims challenging Anheuser-Busch's right to conduct such a work place search were preempted by Section 301 of the Labor Management Relations Act?

PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceeding.

Respondent Anheuser-Busch, Inc.'s parent company is Anheuser-Busch Companies, Inc. The only non-wholly owned subsidiary of respondent Anheuser-Busch, Inc. is Somerset Distributors, LLC.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Anheuser-Busch, Inc. ("Anheuser-Busch") and Robert Warner (collectively "Respondents") respectfully submit this Opposition to the instant Petition for Writ of Certiorari.

OPINIONS BELOW

The Ninth Circuit's November 3, 1997 order affirming the summary judgment for Respondents, which was not reported, is attached to the Petition as Appendix A. The Ninth Circuit's December 23, 1997 order denying the petition for rehearing and suggestion for rehearing *en banc* is attached as Appendix B to the Petition.

The May 24, 1996 judgment for Respondents and the District Court's May 13, 1996 "Decision, Findings of Fact, Conclusions of Law and Order Granting Summary Judgment for Defendants" (*i.e.*, Respondents) are attached to the Petition as Appendix C and Appendix D, respectively.

JURISDICTION

Respondents agree with Petitioner's statement of jurisdiction.

STATUTES INVOLVED

1. Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185.

STATEMENT OF THE CASE

This Petition seeks review of the Ninth Circuit's unpublished one-line order affirming the District Court's grant of summary judgment for Respondents. ("We AFFIRM the District Court's grant of summary judgment to appellees."). Petitioner's request for rehearing was denied by the Ninth Circuit panel deciding the appeal (Circuit Judges Pregerson, D.W. Nelson and Hawkins), and the full Ninth Circuit unanimously rejected Petitioner's suggestion for rehearing *en banc*.

In this action, Petitioner Teamsters Union Local 896 (the "Union" or "Petitioner") challenged the right of Respondent Anheuser-Busch, Incorporated ("Anheuser-Busch" or the "Company" or "Respondent") to conduct searches of employees' vehicles parked on Company premises. The action arises out of a search of the Company's "employee parking lot" which occurred on August 18, 1995 as part of Anheuser-Busch's efforts to maintain a drug free work place at its Los Angeles brewery.

On that occasion, Anheuser-Busch conducted a search of its own parking lot, for drugs contained in cars. This was done during regular working hours. The Company engaged an outside service, which utilized trained dogs to detect the smell of drugs in cars parked in the parking lot. In each instance when a canine detected the scent of drugs and the scent was confirmed by a second canine, the employee who owned the vehicle was asked to come to the parking lot, and was asked to sign a written consent to permit a search of the vehicle. Employees were advised that failure to cooperate with the search would result in discharge from employment.

The Union brought this action in Los Angeles County Superior Court, on behalf of its members employed at

Anheuser-Busch's Los Angeles Brewery (the "Union employees"). Those employees work for Anheuser-Busch pursuant to a collective bargaining agreement between the Company and the Union. Anheuser-Busch removed the action to federal Court, based on federal question jurisdiction and diversity of citizenship.

The District Court granted summary judgment for Anheuser-Busch on the grounds that each of the Union's claims was preempted by Section 301 of the Labor Management Relations Act. (Appendix D.) The Ninth Circuit affirmed.

REASONS FOR DENYING THE PETITION

The Ninth Circuit's short, unpublished order summarily affirming the summary judgment for Respondents is nonprecedential. Although the Union mischaracterizes both the facts giving rise to this dispute and the legal conclusions reached by the courts below, an examination of the findings of the lower courts clearly demonstrates that the judgment was perfectly consistent with and properly applied the controlling § 301 preemption principles established by this Court.

The Ninth Circuit's order is also consistent with the Ninth Circuit's prior decisions, as well as decisions from other circuits. There is no "confusion" in the lower courts or conflict between the circuits as to any question raised by this case, nor is there any question which is of such importance to warrant review by this Court.

In fact, the full Ninth Circuit unanimously rejected Petitioner's suggestion for a rehearing *en banc*.

A. The Ninth Circuit Order Is Non-precedential.

The Ninth Circuit's order summarily affirms the District Court's order granting Respondents' summary judgment. The order does not explain the basis for the ruling. (Appendix A) The order cannot be cited to or relied upon by other courts in the Ninth Circuit (Ninth Circuit Rule 36-3), much less by courts in other circuits. If the Section 301 issues raised by this case are as important and far reaching as Petitioner suggests, they deserve a full discussion and analysis by a court of appeals before consideration by this Court. There is no sound or compelling reason for this Court to use its sought after resources to rehash well-settled preemption rules based on the Ninth Circuit's one-line order.

B. The Petition Wildly Misrepresents The Facts Of The Dispute, And How The Law Was Applied By The Courts Below.

Rule 15.1 of this Court provides that "a brief in opposition to a petition for a writ of certiorari . . . should address any perceived misstatements of fact or law set forth in the petition." In the instant case, Petitioner has wildly misrepresented both the facts and the law.

1. The Union's Misrepresentations of Fact.

In its Petition, the Union asserts that this case involves employees who were "confined" in a "prison-like caged area . . . like so many holocaust victims." Petition

at 3. The Petition goes on to recite a story that is dramatically at odds with the evidentiary record, and the factual findings of the courts below.

The truth is reflected in the District Court's findings of fact.[1] Those findings make it clear that, contrary to the Union's assertions, no employee at Anheuser-Busch's plant was "confined" at all, much less "caged like a holocaust victim." Rather, the District Court expressly found, employees were free to leave the plant at any time, but were informed that they would be subject to termination from employment if they refused to cooperate with Anheuser-Busch's search.[2] The District

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[1] The District Court granted summary judgment for Anheuser-Busch based on admissions taken from the deposition of the Union's designated representative. Despite the Union's contrary representations to this Court, the facts which supported summary judgment below were entirely undisputed.

[2] This finding was based on, among other things, the deposition of the Union's representative, who unequivocally testified that the only constraint placed on employees to require their cooperation with the drug search was the possibility of termination; *i.e.*, the fact that an employee who left the Brewery premises without consenting to a search upon request would be subject to termination of employment. The Union's representative testified:

> "Q. Other than the threat of termination for refusing to consent or violating plant rules, are you aware of any other threat or constraint that was placed on employees on that night?
>
> [Objection omitted.]
>
> A. To my knowledge, no, sir.
>
> Q. As you understand it, the only consequence that any employee was told they would suffer if they left the plant without signing the consent and passing through the turnstile was that they would lose their job?

(continued)

Court's findings of fact included the following:

> "5. Union employees at the Los Angeles Brewery clock in and out of the brewery by inserting an electronic badge to pass through a 'turnstile' between the brewery plant and the employee parking lot.
>
> 6. There is no physical obstruction which would prevent a person from leaving the brewery premises, or entering the employee parking lot, without passing through these turnstiles, but an employee is subject to discharge if he or she does leave in a way as to avoid these turnstiles. Guards are stationed in such a manner as to inform any employee attempting to avoid these turnstiles that they must go through the turnstiles or face termination.
>
> 7. The Union's claim of 'false imprisonment' is based on the fact that employees were threatened with

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(fn. continued)

> That was the only consequence; correct?
>
> A. The only consequence that I was informed of, yes, sir.
>
> . . .
>
> Q. As you understand it, if an employee had chosen not to pass through the turnstiles but rather walk around the guard shack into the parking lot, get in their car and leave, they would have been terminated; correct?"
>
> A. Yes.

> termination if they left the brewery premises without consenting to a vehicle search, or without clocking out by passing through the turnstiles."

(Appendix D.)

Further, as the District Court expressly found, Anheuser-Busch's right to conduct such a search was governed by the collective bargaining agreement between Anheuser-Busch and the Union. The District Court found:

> "9. Under work rules adopted by Anheuser-Busch, any Union employee who leaves plant premises during working hours is subject to discipline up to and including discharge, for 'job abandonment.'
>
> 10. Anheuser-Busch has a history of conducting certain types of work place searches-searches which the Union has acknowledged are permissible under the collective bargaining agreement."

(Appendix D.)[3]

---

[3] Five Anheuser-Busch employees who were disciplined for refusing to consent to a search, or because drugs or paraphernalia were found in their vehicles, filed grievances through Petitioner Union, or another union representing other groups of Anheuser-Busch employees. In all five cases, the unions asserted that Anheuser-Busch breached the collective bargaining agreement in conducting the search. In all five cases, the arbitrators concluded that the search was permitted by the collective bargaining agreements, including the agreement between Petitioner Union and Anheuser-Busch.

In its Petition, the Union asserts that the events giving rise to this

(continued)

2. The Union's Misrepresentations Of Law.

The Union suggests that the lower court "reasoned that any transaction between the Company and its employees is *ipso facto* covered by the Company's collective bargaining agreement with the Union, and therefore preempted . . ." Petition at 9. Thus, the Union argues, the lower court "require[d] employees covered by collective bargaining agreements to give up rights under state law which are **independent of such agreements.**" *Id.* (emphasis added).

The lower court, however, made no such finding. Rather, the District Court's Conclusions of Law (affirmed by the one sentence opinion of the Ninth Circuit) expressly found that the rights at issue were **not** independent of the collective bargaining agreement:

> "1. The claims of Plaintiff Union are preempted under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. **The Union's claims are inextricably intertwined with the collective bargaining agreement between the Union and Anheuser-**

(fn. continued)
dispute were "entirely independent" of the collective bargaining agreement, and that the agreement did not authorize the searches. The Union characterizes this as "the indisputable absence of any provision in the collective bargaining agreement even purporting [to apply to this dispute]." Describing this statement as "disingenuous" would be a grave disservice to this Court. The District Court, the Ninth Circuit, and five different arbitrators all concluded that Anheuser-Busch's collective bargaining agreements did regulate the Company's authority to conduct work place searches, and all five arbitrators concluded that the search was permissible under those agreements, including the Teamsters' agreement.

> **Busch, and require interpretation of that agreement for their resolution.** *Stikes v. Chevron USA, Inc.*, 914 F.2d 1265 (9th Cir. 1990), *cert. denied*, 500 U.S. 917 (1991); *Schlacter-Jones v. General Telephone*, 936 F.2d 435, 441 (9th Cir. 1991); *Laws v. Calmat*, 852 F.2d 430, 433 (9th Cir. 1988)."

(Appendix D.) (Emphasis added.)[4]

Thus, the lower courts did not find that the "mere existence" of a collective bargaining agreement preempted all state law, as the Union contends.[5] Rather, the lower courts found that the issues raised in this particular lawsuit, arising out of this particular work place search, were "inextricably intertwined with the collective bargaining agreement, and require[d] interpretation of that agreement for their resolution." *Id.* That is **exactly** the standard for determining preemption which has been repeatedly announced by this Court, as discussed below.

In short, a comparison of the Union's Petition with the lower courts' findings of fact and conclusions of law

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[4] Not only does the Union misrepresent the lower courts' conclusions of law, the Petition does not even **mention** the three cases expressly relied on by the District Court in reaching this conclusion of law.

[5] The Union purports to state the issue raised by its Petition as follows:

> "Was the lower court's finding that state law is completely preempted by **the mere existence** of a collective bargaining agreement, leaving individual union members without redress for violation of important state constitutional and statutory rights, erroneous?"

makes one thing very clear: This Petition does not seek resolution of an important legal issue, nor does it seek to resolve a conflict among the lower courts. Rather, this Petition asks the Supreme Court to re-review the specific factual findings made by the courts below in this specific case.

The fact that the Union finds it necessary to misrepresent the facts found below, and the law applied below, demonstrates that the Union is well aware that there is no valid reason to grant certiorari in this case. If certiorari were warranted in **this case**, it would be unnecessary for the Union to manufacture a **very different case**, with findings of fact and conclusions of law totally at odds with what was actually found by the courts below.

C. The Ninth Circuit's Order Is Consistent With This Court's Section 301 Cases.

The Ninth Circuit's order is entirely consistent with this Court's Section 301 preemption cases. This Court has repeatedly held that claims which depend on the interpretation of a collective bargaining agreement for their resolution are preempted by Section 301. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 394, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). As this Court explained in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 405-06, 411, 108 S.Ct. 1877, 100 L.Ed.2d 410 (1988):

> "[I]f the resolution of a state-law claim **depends upon the meaning of a collective-bargaining agreement**, the application of state law . . . is pre-empted and federal labor-law

> principles . . . must be employed to resolve the dispute.
>
> . . .
>
> [J]udges can determine questions of state law involving labor-management relations **only** if such questions do not require **construing** collective-bargaining agreements."

(emphasis added).

In considering whether a state law claim requires analysis of a collective bargaining agreement, and is therefore preempted, this Court has emphasized that it is necessary to consider both express and implied terms of the agreement. In *Consolidated Rail Corp. v. Railway Labor Executives' Ass'n.*, 491 U.S. 299, 109 S.Ct. 2477, 105 L.Ed.2d 250 (1989), this Court held that a dispute over a railroad's adoption of a drug testing program could only be resolved by interpretation of **implied terms** in the applicable collective bargaining agreement, based on the parties' past practice and the "law of the shop." The Court explained:

> "Neither party relies on any express provision of the agreement; indeed, the agreement is not part of the record before us. As the parties acknowledge, however, collective-bargaining agreements may include implied, as well as express, terms. Furthermore, it is well established that the parties' 'practice, usage and custom' is of significance in interpreting their agreement. This Court has observed: 'A collective bargaining agreement . . . calls into being a new common law —

> the common law of a particular industry or of a particular plant.' "

491 U.S. at 311-12 (citations omitted) (emphasis added).

This Court's established Section 301 analysis has not been changed by *Livadas v. Bradshaw*, 512 U.S. 107, 114 S.Ct. 2068, 129 L.Ed.2d 93 (1994). In fact, *Livadas* reaffirmed the Court's prior holdings that claims which depend on interpretation of the collective bargaining agreement for their resolution are preempted by Section 301. *Livadas* involved a claim which was **not** dependent on the collective bargaining agreement. *Livadas* dealt with a California statute which imposed a penalty on employers who failed to pay wages due to an employee immediately upon discharge. This Court held that union employees were entitled to recover this penalty, just as non-union employees are. The Court explained that enforcement of this state law right did **not** require interpretation of the collective bargaining agreement:

> "[T]he primary text for deciding whether Livadas was entitled to a penalty was not the Food Store Contract, but a calendar. The only issue raised by Livadas's claim, whether Safeway 'wilfully fail[ed] to pay' her wages promptly upon severance, Cal.Lab.Code Ann. § 203 (West 1989), was a question of state law, entirely independent of any understanding embodied in the collective-bargaining agreement between the union and the employer."

512 U.S. at 124-125.[6]

In the instant case, in contrast, the District Court expressly found, and the Ninth Circuit affirmed, that the Union's claims were:

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[6] Significantly, this Court noted that even a claim under Cal. Labor Code § 203 could be preempted by Section 301 where the collective bargaining agreement was at issue. *Livadas*, 512 U.S. at 125, n.19.

Similarly, in *Hawaiian Airlines v. Norris*, 512 U.S. 246, 114 S.Ct. 2239, 2245, 129 L.Ed.2d 203 (1994), this Court stressed the rule that any claim which requires interpretation of the collective bargaining agreement is preempted:

> "We have defined minor disputes as those involving the **interpretation** or application of existing labor agreements. *See, e.g., Consolidated Rail Corp. v. Railway Labor Exec. Assn.*, 491 U.S. 299, 305, 109 S.Ct. 2477, 2482, 105 L.Ed.2d 250 (1989) ('The distinguishing feature of [a minor dispute] is that the dispute may be conclusively resolved by **interpreting** the existing [CBA]'); *Pittsburgh & Lake Erie R. Co. v. Railway Labor Executives Assn.*, 491 U.S. 490, 501, n. 12, 109 S.Ct. 2584, 2592, 105 L.Ed.2d 415 (1989) ('Minor disputes are those involving the **interpretation** or application of existing contracts'); *Brotherhood of R.R. Trainmen*, 353 U.S., at 33, 33, 77 S.Ct., at 637 (minor disputes are 'controversies over the **meaning** of an existing collective bargaining agreement'); *Slocum v. Delaware, L. & W.R. Co.*, 339 U.S. 239, 243, 70 S.Ct. 577, 94 L.Ed. 795 (1950) (RLA arbitral mechanism is meant to provide remedies for 'adjustment of railroad-employee disputes growing out of the **interpretation** of existing agreements')."

512 U.S. at 256 (emphasis added).

> "inextricably intertwined with the collective bargaining agreement between the Union and Anheuser-Busch, and require[d] interpretation of that agreement for their resolution."

Although the Union's Petition first ignores and then misrepresents this finding, the fact remains that this case involves nothing more than a garden-variety application of well-established preemption principles — principles which this Court has repeatedly endorsed.

D. The Ninth Circuit's Order Is Consistent With Other Ninth Circuit Cases.

The Ninth Circuit's order affirming summary judgment for Respondents is also consistent with, and supported by, numerous other Ninth Circuit cases, holding state law privacy and related claims were preempted under nearly identical circumstances.

Stikes v. Chevron USA, Inc., 914 F.2d 1265 (9th Cir. 1990), *cert. denied*, 500 U.S. 917, 111 S.Ct. 2015, 114 L.Ed.2d 101 (1991) is directly on point. There, the plaintiff sued his employer in state court alleging, *inter alia*, that his employer violated his right to privacy under the California Constitution when it fired him for refusing to permit a search of his vehicle parked in the company parking lot. The employer removed the case to federal court under Section 301. The district court denied the plaintiff's motion to remand and granted summary judgment for the employer, holding that the plaintiff's claims were preempted by Section 301.

The Ninth Circuit affirmed, ruling:

> "Stikes' right to privacy claim is inextricably intertwined with the

> collective bargaining agreement. This is because a violation of California's constitutional right to privacy requires both that an individual have a 'personal and objectively reasonable expectation of privacy' and that the expectation 'has been infringed by an unreasonable . . . intrusion.' [Citations]. . . . Here, the district court could not ascertain Stikes' expectations of privacy at the workplace without considering the conditions of his employment enumerated in the collective bargaining agreement."

Id. at 1269.

Based on this finding of preemption, the Ninth Circuit upheld summary judgment for the employer:

> "Stikes' privacy claim was completely preempted by section 301 and properly dismissed on the merits."

Id. at 1270.

Similarly, in *Schlacter-Jones v. General Telephone*, 936 F.2d 435, 439 (9th Cir. 1991) (upholding summary judgment on a claim for invasion of privacy under California Constitution based on implementation of a drug and alcohol testing program), the Ninth Circuit explained that the preemption doctrine requires dismissal of such state law claims:

> "The district court reasoned that GTE's drug testing policy trumps state law claims for breach of implied contract and the covenant of good faith and fair dealing, as well as Schlacter-Jones's claims for

> intentional infliction of emotional distress and fraud, because these claims implicate the conditions of her employment and thus are 'substantially dependent' on the CBA for resolution. It also held that her state constitutional claims for violation of her rights to privacy and due process implicate the CBA . . . In so doing, the district court recognized that claims that implicate a collective bargaining agreement must be construed as a § 301 claim and adjudicated under federal labor law or be dismissed as preempted. *Allis-Chalmers*, 471 U.S. at 220, 105 S.Ct. at 1918-19; *Harris*, 897 F.2d at 402-03. . . . We agree that each of Schlacter-Jones's claims is preempted." [footnote omitted]

On numerous other occasions, the Ninth Circuit has reached the exact same conclusion. *See e.g., Utility Workers of America, Local No. 246 v. Southern California Edison Company*, 852 F.2d 1083, 1086 (9th Cir. 1988), *cert. denied*, 489 U.S. 1078, 109 S.Ct. 1530, 103 L.Ed.2d 835 (1989)("we find that Local 246's state-law claims cannot be resolved without reference to the collective bargaining agreement and that they should therefore be dismissed as preempted by section 301"); *Laws v. Calmat*, 852 F.2d 430, 433 (9th Cir. 1988) ("[W]e must hold that [the employee's] claim is also 'substantially dependant upon' the Calmat-Union CBA. [The employee's] conditions of employment are governed by the CBA. A drug and alcohol testing program, upon which all employees' continued employment

depends, is a working condition **whether or not it is specifically discussed in the CBA.**" (emphasis added)); *Utility Workers of America, Local No. 246 v. Southern California Edison, Co.*, 852 F.2d 1083, 1086 (9th Cir. 1988), *cert denied*, 489 U.S. 1078, 109 S.Ct. 1530, 103 L.Ed.2d 835 (1989) (state law privacy and wrongful termination claims arising out of employer's unilateral random drug testing program preempted by Section 301); *Scott v. Machinists Automotive Trades Dist. Lodge No. 190*, 827 F.2d 589, 594 (9th Cir. 1987) (defamation claim arising out of misconduct investigation preempted by Section 301).[7]

E. The Full Ninth Circuit Unanimously Rejected Petitioner's Suggestion For Rehearing *En Banc*.

Not only does the Ninth Circuit's order comport with its prior Section 301 decisions, the full Ninth Circuit unanimously rejected Petitioner's suggestion for a rehearing *en banc*. (Appendix B) The fact that not even one Circuit Judge voted to rehear this case *en banc* further demonstrates that the order is in the mainstream, and does not warrant further review by this Court.

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[7] While the Ninth Circuit has not considered when a false imprisonment claim may be preempted, it has repeatedly held claims which are merely "peripheral" to a preempted Privacy claim are also preempted. *Stikes*, 914 F.2d at 1270. *See Romero v. Hilton Hotels Corp.*, 137 L.R.R.M. (BNA) 2647, 2649-50 (D. Hawaii 1991) (assault, battery, false imprisonment, and infliction of emotional distress claims arising out of employer's theft investigation Preempted by Section 301).

F. The Ninth Circuit's Order Is Consistent With Decisions From Other Circuits.

Far from creating a conflict between the circuits, the Ninth Circuit's order is consistent with the great weight of authority from other circuits as well. *See, e.g., Sweigart v. Delmotte*, 148 L.R.R.M. (BNA) 2413, 2415-17 (E.D. Pa. 1994), *affirmed*, 74 F.3d 1228 (3d Cir. 1995) (Section 301 preempts state law violation of privacy claim resulting from employer's surveillance of employee bathroom); *Mock v. T.G. & Y. Stores Co.*, 971 F.2d 522, 529-30 (10th Cir. 1992) (state law claims for invasion of privacy, defamation, false imprisonment, intentional infliction of emotional distress, wrongful termination, and covenant of good faith and fair dealing arising from employer's interrogation of employees were preempted by Section 301); *In Re Amoco Petroleum Additives Co.*, 964 F.2d 706, 710 (7th Cir. 1992) (state law claims for invasion of privacy and infliction of emotional distress based on employer's use of surveillance cameras in employee locker room are preempted by Section 301); *Bagby v. General Motors Corp.*, 976 F.2d 919, 921-22 (5th Cir. 1992) (defamation and intentional infliction claims arising out of theft investigation preempted); *Jackson v. Liquid Carbonic Corporation*, 863 F.2d 111, 119 (1st Cir. 1988), *cert. denied*, 490 U.S. 1107, 109 S.Ct. 3158, 104 L.Ed.2d 1021 (1989) (state law invasion of privacy claim based on employee's termination for failing drug test preempted by Section 301); *Kirby v. Allegheny Beverage Corp.*, 811 F.2d 253, 256 (4th Cir. 1987) (invasion of privacy claim based on employer's request to search employee's person and vehicle preempted by Section 301); *Strachan v. Union Oil Co.*, 768 F.2d 703, 705-6 (5th Cir. 1985)

(defamation, false imprisonment, and false arrest claims arising out of drug investigation preempted by Section 301); *Blanchard v. Simpson Plainwell Paper Co.*, 925 F. Supp. 510 (W.D. Mich. 1995) (false imprisonment claim arising out of drug investigation preempted); *Kelly v. Mercoid Corporation*, 776 F. Supp. 1246, 1253-55 (N.D. Ill. 1991) (state law privacy claim based on employee's termination for refusing urinalysis test preempted by Section 301); *Majors v. U.S. Air, Inc.*, 525 F. Supp. 853, 857 (D. Md. 1981) (false imprisonment and defamation claims arising out of theft investigation preempted).

The Union argues that the circuit courts are "fractured" over how the preemption doctrine should be applied. The Union cites a number of cases which it characterizes as applying the doctrine "broadly" or "narrowly." This characterization, however, is self-serving and based purely on whether the Union agrees or disagrees with the results of the various courts' decisions. The controlling fact is that all of the cases cited by the Union apply the same standard — whether the dispute requires interpretation of a collective bargaining agreement. Consequently, although the Union argues with a particular court's conclusion as to whether a particular set of facts do or do not require interpretation of a collective bargaining agreement, the preemption principle is well understood and uniformly applied by each lower court.

Here, there is no possible question that resolution of the dispute did and does require interpretation of the collective bargaining agreement. "Privacy in the workplace ... is an ordinary subject of bargaining. The extent of privacy is a 'condition' of employment." *In Re Amoco Petroleum Additives Co.*, 964 F.2d 706, 710 (7th Cir. 1992). The Union does not cite a single case

holding that an employer's right to conduct searches of its own premises is not an appropriate subject for collective bargaining, or that a collectively bargained right to conduct such searches could possibly fail to preempt a state law challenge to the search.

Furthermore, as noted above, five different arbitrators have upheld Anheuser-Busch's right to conduct such searches under applicable collective bargaining agreements. See fn. 3, *supra*. For decades, this Court has endorsed the resolution of disputes such as this one through the collective bargaining and arbitration process. The Ninth Circuit summarized this Court's endorsement succinctly in *Utility Workers of America*, 852 F.2d at 1087-88:

> "Federal labor policy places great weight upon ensuring the availability of grievance procedures as 'a uniform and **exclusive method** for orderly settlement of employee grievances.' *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653, 85 S.Ct. 614, 617, 13 L.Ed.2d 580 (1965). 'Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties.' *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581, 80 S.Ct. 1347, 1352, 4 L.Ed.2d 1409 (1960). **'A rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most**

> **of its effectiveness, . . . as well as eviscerate a central tenet of federal labor-contract law under § 301** that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance.' *Allis-Chalmers*, 471 U.S. at 220, 105 S.Ct. at 1916."

(Emphasis added.) Petitioner here does not seek resolution of an important or conflicted legal principle. Rather, Petitioner seeks the very "rule that permit[s] an individual to sidestep available grievance procedures," which this Court cautioned **against** in *Allis-Chalmers*. This Petition should be denied.

CONCLUSION

For all the foregoing reasons, the petition should be denied.

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Respectfully submitted,

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